



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### **Request for Proposals—April 7, 2015 The Ombudsman in Federal Agencies**

The Administrative Conference is seeking a consultant or consultants to undertake a research project that will study procedures and best practices related to the use of ombudsmen in federal agencies.

Proposals are due by 6:00 p.m. Eastern Time on May 11, 2015.

#### Background

Ombudsmen (or ombuds) help resolve complaints and questions from individuals that concern the functioning of an entity or program.<sup>1</sup> In addition to resolving specific disputes, ombuds may make recommendations to improve the functioning of the entities or programs they serve. It is widely recognized that independence, impartiality, and confidentiality are essential characteristics of effective ombuds, and the procedures under which they function must provide these features.<sup>2</sup>

In 1990, the Administrative Conference adopted Recommendation 90-2, *The Ombudsman in Federal Agencies*. This recommendation encouraged support for ombuds within the federal government and identified best practices for creating ombuds offices. The recommendation addressed external ombuds only.<sup>3</sup> In 1991, the Conference published a brochure, *The Ombudsman: A Primer for Federal Agencies*, which expanded upon Recommendation 90-2.

Since the early 1990s, ombuds have become much more prevalent in the federal government. The consultant report for Recommendation 90-2 identified just 12 internal and external ombuds (or ombuds offices) in seven federal agencies.<sup>4</sup> In 2009, a report by the Internal Revenue Service's National Taxpayer Advocate identified 41 external ombuds offices,<sup>5</sup> and a 2001 GAO report examined 22 internal ombuds offices dedicated to resolving workplace conflicts.<sup>6</sup>

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<sup>1</sup> The ombuds concept was brought to the United States in large part through the scholarship of Walter Gellhorn. See generally W. GELLHORN, *WHEN AMERICANS COMPLAIN: GOVERNMENTAL GRIEVANCE PROCEDURES* (1966); W. GELLHORN, *OMBUDSMEN AND OTHERS: CITIZENS' PROTECTORS IN NINE COUNTIES* (1966). Professor Gellhorn was a long-time Council member of the Administrative Conference.

<sup>2</sup> See, e.g., American Bar Association, *Standards for the Establishment and Operation of Ombuds Offices* 3-4 (2004). See also references listed below in the Scope of Work.

<sup>3</sup> External ombuds hear concerns raised by members of the public or others outside the organization. In contrast, internal ombuds hear concerns raised by individuals within an organization (e.g., employees).

<sup>4</sup> David Anderson and Diane Stockton, *Ombudsmen in Federal Agencies: The Theory and the Practice*, 1990 ACUS 105, 199-205.

<sup>5</sup> National Taxpayer Advocate, *2009 Annual Report to Congress: Volume Two: Research and Related Studies* 112 (Dec. 31, 2009).

<sup>6</sup> General Accounting Office (now Government Accountability Office), *Human Capital: The Role of Ombudsmen in Dispute Resolution 2* (2001).



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A return to this topic by the Administrative Conference of the United States is timely for three reasons. First, based on the National Taxpayer Advocate and GAO reports cited above, and through anecdotal evidence from the ombuds community, we know there has been a recent proliferation of ombuds; however, there is little comprehensive information available about the placement, role, and activities of ombuds throughout the federal government. Second, there is substantial inconsistency regarding the definition of “ombudsman.” Finally, the expanded use of ombuds during the 25 years since the adoption of Recommendation 90-2 provides a valuable opportunity to reevaluate the recommendation and examine the effectiveness and value of agency ombuds.

### Project Description

The Conference seeks proposals to study the current state of ombuds in the United States Government. The study should: (1) identify which agencies currently make use of ombuds and the scope of ombuds activities; (2) evaluate the activities of ombuds that have improved agency dispute resolution or program functions; (3) provide updated best practices for the establishment, organization, and operation of ombuds offices; and (4) recommend situations in which expanded use of ombuds may benefit agencies.

A detailed scope of work follows, but the Conference encourages prospective consultants to comment on the scope of work in their project proposals and identify/include any related issues or topics that the Conference may wish to consider incorporating into this project.

### **Scope of Work**

The study should include consideration of the following issues and questions:

- **Definitional Issues.** How do agencies define “ombudsman,” and what are the sources of those definitions (law, policy, practice)? What are the generally accepted standards for ombuds practice? What variations exist and why? What impact do these variations have on the role of ombuds in different federal agencies?
- **Agency Practices.** Which federal agencies make use of ombuds, and what types of ombuds do they use (e.g., internal vs. external ombuds)? What types of disputes and issues do ombuds help resolve? What value do ombuds bring to federal agencies or programs, and have ombuds achieved better outcomes in resolving certain types of disputes or issues? Do federal ombuds have sufficient access to independent counsel? Should agencies make greater use of ombuds, and under what circumstances should agencies without ombuds programs consider establishing them?
- **Legal Parameters.** What legal protections are in place for ombuds to function according to any applicable, generally accepted definitions and practices? In particular, do the provisions of the Administrative Dispute Resolution (ADR) Act or



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the Freedom of Information Act (FOIA) raise any significant issues with respect to confidentiality and recordkeeping?

- **Potential Agency Recommendations.** What are agency best practices for using ombuds? To what extent do these best practices differ from prior guidelines issued by the Administrative Conference (in Administrative Conference Recommendation 90-2), the American Bar Association, (in the *Standards for the Establishment and Operation of Ombuds Offices*), and various ombuds associations (e.g., the *International Ombudsman Association Standards of Practice*, the *Coalition of Federal Ombudsman Charter and Standards*, and the *United States Ombudsman Association Governmental Ombudsman Standards*).

### How to Submit a Proposal

Proposals are invited from qualified persons who would like to serve as a research consultant on this project. All responses will be considered by the Conference staff and the Chairman.

A consultant's study should result in a report that is delivered first for review by the Conference staff and Chairman and then forwarded to a committee of the Conference membership for consideration. The report should provide proposed recommendations. The consultant works with Conference staff and the committee to refine and further shape the report and may work with Conference staff to revise the recommendations. Recommendations approved by the committee are then forwarded to the Council of the Conference for consideration, and the Council forwards the recommendations (with its views) to the full Conference membership meeting in plenary session. If approved at the plenary session, a recommendation becomes an official recommendation of the Administrative Conference. (For a general understanding of how the Conference is organized and operates, see 5 U.S.C. §§ 591-596, and <http://www.acus.gov>.)

The Conference will provide a consulting fee for this study plus a budget for related expenses. The Conference also typically encourages its consultants to publish the results of their studies in journals or other publications. Thus, working as a Conference consultant provides some compensation, a publication opportunity, and the opportunity to work with Conference members from federal agencies, academia, the private sector, and public interest organizations to help shape and improve administrative law, procedure, and practice.

Those submitting proposals should understand that, in addition to the work involved in researching and writing the consultant's report, the consultant will (in most cases) need to work with Conference staff and committees as the Conference develops a recommendation based on the report. The consulting fee is not designed to match a consultant's normal consulting rates. It is a significant public service to serve as a consultant to the Conference.

To submit a proposal to serve as the Conference's consultant on this project, you must:



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- Send an e-mail to Connie L. Vogelmann, Attorney Advisor, at [cvogelmann@acus.gov](mailto:cvogelmann@acus.gov). *Proposals must be submitted by e-mail.*
- Include the phrase “ACUS Project Proposal” in the subject line of your e-mail.

In the body of your e-mail or in an attachment, please:

- State the name of the project for which you are submitting a proposal (The Ombudsman in Federal Agencies).
- Explain why you would be well qualified to work on the project. Include your curriculum vitae or other summary of relevant experience.
- Explain your research methodology and how you would develop recommendations based on the research. There is no required format, and 2-3 pages should probably be sufficient for this section.
- State how much funding you would need for the project, keeping in mind that a typical Conference research contract includes a consulting fee of \$12,000 - \$15,000 plus travel expenses of \$1,000, and research assistance expenses of \$1,000. There may be some flexibility in the budget based on factors relating to the proposal (e.g., the consultant’s location relative to Washington, DC, and the need for research assistance and empirical or interviewing work), so your proposal should suggest any special needs in this regard. The amount of the consulting fee and expenses will not be a critical factor in the award of the contract; the quality of the proposal and of the consultant’s ability to carry out the study will be the most important factors.
- Propose a schedule for the project. The Conference’s research projects typically call for submission of an outline, a draft report, and a final report. Multiple draft reports may be necessary based on input from the Chairman, staff, or committee. The draft report should be substantially complete and ready for consideration by the committee. Proposals for this project should target the submission of the draft report so that the recommendation can be targeted for completion at a plenary session of the Conference held in June 2016. A December 2015 submission date for the draft report is preferred, but high quality research leading to a well-written report will be the prime consideration.

Submit your proposal by 6:00 p.m. Eastern Time on Monday, May 11, 2015. Only proposals submitted by the stated deadline are guaranteed to receive consideration. Proposals may also be submitted or amended at any time until the award of the contract, and the Conference may consider any proposals or amended proposals received at any time before the award of the contract.

Proposals will be evaluated based on:

- The qualifications and experience of the researcher(s), and knowledge of literature in the field;
- The quality and clarity of the proposal;



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- The timeline of the proposal, and the ability of the researcher to perform the research in a timely manner;
- The likelihood that the research will contribute to greater understanding of the subject matter studied and lead to an Administrative Conference recommendation that will improve administrative procedures in the federal government; and
- The cost of the proposal (although the other factors are more important)

Failure to follow the above instructions may result in your proposal not being considered. Including the phrase "ACUS Project Proposal" in the subject line of your e-mail is important so that your proposal can be easily identified.